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Remarks

AUG 15 2007

Claims 1-7 remain in the application for consideration of the Examiner.

Reconsideration and withdrawal of the outstanding restriction requirement are respectfully requested in light of the following remarks.

The office action alleges that the application includes Claims 1-4 drawn to a thermoelectric device and Claims 5-7 drawn to a method of making a thermoelectric device.

At the onset, applicant notes that 35 USC § 121, the basis for a restriction requirement, provides for restriction only if two or more independent and distinct inventions are claimed in one application. While § 802.01 of the MPEP indicates that a restriction between independent or distinct inventions is permissible, such section of the MPEP is clearly erroneous in view of the plain and unambiguous language of 35 USC § 121.

A review of the office action reveals that the examiner has failed to clearly indicate how the subject matter recited in the claims in issue relating to the respective alleged inventions represent both independent and distinct inventions as required by 35 USC § 121.

In this connection, the above noted section of the MPEP defines the term 'independent' as meaning that there is no disclosed relationship between the two or more subjects disclosed. That is that they are unconnected in design, operation or effect. Surely, the examiner is not contending that the respective embodiments recited in the claims in issue have no disclosed relationship; for if such were the case, the examiner's contention is clearly without merit as a review of the instant application reveals.

Furthermore, presuming arguendo that the examiner could establish that the subject matter recited in the claims in issue relates to both independent and distinct inventions, as required by statute, applicant notes that as pointed out by § 803 of the MPEP, if a search and examination of the entire application can be made without a serious burden, the examiner must examine the application on the merits, even though the application includes claims to two distinct or independent inventions.

A review of the office action reveals that the examiner has failed provide any indication other than the alleged separate status as to how or why a search and examination of all seven claims in the instant application create a serious burden on the part of the United States Patent and Trademark Office.

In order to comply with the examiner's requirement, applicant provisionally elects with traverse, for prosecution on the merits, Claims 1-4 drawn to a thermoelectric device.

In view of the foregoing remarks, reconsideration of this application is respectfully requested, at an early and favorable action upon all the claims is earnestly solicited. While it is believed that the instant response places the application in condition for allowance, and should the Examiner have any further comments or suggestions, it is requested that the Examiner contact the undersigned in order to expeditiously resolve any outstanding issues.

If the Examiner should have any questions, Applicant's legal representative can be contacted at 214-893-8886.

Respectfully submitted;

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